

1237 BATTERY TO AN EMERGENCY MEDICAL CARE PROVIDER¹ — § 940.20(7)

INSTRUCTION WITHDRAWN FOR OFFENSES OCCURRING AFTER MARCH 24, 2022, BECAUSE THE STATUTE TO WHICH IT PERTAINED WAS REPEALED BY 2021 WISCONSIN ACT 209. FOR OFFENSES OCCURRING AFTER MARCH 24, 2022, SEE WIS JI-CRIMINAL 1247A AND 1247B.

Statutory Definition of the Crime

Section 940.20(7) of the Criminal Code of Wisconsin is violated by one who intentionally causes bodily harm to an (identify appropriate category for the victim)², where at the time of the act the defendant knows or has reason to know that the victim is an (identify appropriate category for the victim) acting in an official capacity and there is no consent of the victim harmed.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following six elements were present.

Elements of the Crime That the State Must Prove

1. The defendant caused bodily harm to (name of victim).

“Cause” means that the defendant’s conduct was a substantial factor in producing the bodily harm.³

“Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.⁴

2. (Name of victim) was a (identify appropriate category for the victim). [A _____ is (identify appropriate category for the victim).]⁵

3. (Name of victim) was acting in an official capacity.

This means (name of victim) was performing duties that (he) (she) was employed⁶ to perform.⁷ [The duties of a _____ include: _____].⁸

4. The defendant knew, or had reason to know, that (name of victim) was acting in an official capacity.⁹

5. (Name of victim) did not consent to the causing of bodily harm.

6. The defendant acted intentionally.

This requires that the defendant intended to cause bodily harm to (name of victim) and knew that (name of victim) did not consent to the causing of bodily harm.¹⁰

Intent to cause bodily harm means that the defendant had the mental purpose to cause bodily harm to another human being or was aware that his conduct was practically certain to cause bodily harm to another.¹¹

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent or knowledge. Intent and knowledge must be found, if found at all, from the defendant's acts, words, and statements,

if any, and from all the facts and circumstances in this case bearing upon intent and knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all six elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1237 was originally published in 1996 and revised in 2004, 2008, and 2018. This revision was approved by the Committee in June 2020; it reflects statutory amendments made by 2019 Wisconsin Act 97. Its withdrawal for offenses occurring after the effective date of 2021 Wisconsin Act 209 was approved by the Committee in April 2022.

Section 940.20(7) was created by 1995 Wisconsin Act 145 [effective date: March 20, 1996].

2017 Wisconsin Act 12 [effective date: June 23, 2017] changed the terminology used in the statute from “emergency medical technician” to “emergency medical services practitioner” and from “first responder” to “emergency medical responder.”

2019 Wisconsin Act 97 [effective date: February 7, 2020] added the category of “a health care provider who works in a hospital” to the list of applicable victims. The Act also amended the definition of “emergency department.”

1. The statute applies to five different categories of person; for each category, the statute provides a full or partial definition. The instruction provides a blank where it is necessary to identify the category applicable to the victim. The category is to be defined, if necessary, in the second element.

2. Identify the appropriate category for the victim in this blank and the other blanks in the instruction: a health care provider who works in a hospital; emergency department worker; emergency medical services practitioner; emergency medical responder; or ambulance driver. The terms will be defined, if necessary, in the second element.

3. The Committee concluded that the simple “substantial factor” definition of cause should be sufficient for most cases. Where there is evidence of more than one possible cause, something like the following might be added:

There may be more than one cause of bodily harm. The act of one person alone might produce it, or the acts of two or more persons might jointly produce it.

4. This is the definition of “bodily harm” provided in § 939.22(4).

5. If it is believed to be necessary, provide a definition for the type of victim involved. For “emergency department worker,” see § 940.20(7)(a)2. For “emergency medical services practitioner,” § 940.20(7)(a)2g provides that the definition in § 256.01(5) applies. For “emergency medical responder,” § 940.20(7)(a)2d provides that the definition in § 256.01(4p) applies. For “ambulance driver” § 940.20(7)(a)1e provides that the definition of “ambulance” in § 256.01(1t) applies.

§ 940.20(7)(a) provides: “‘Emergency department’ means a room or area in a hospital that is primarily used to provide emergency care, diagnosis or radiological treatment.”

§ 940.20(7)(a)3 provides: “‘health care provider’ means any person who is licensed, registered, permitted or certified by the department of health services or the department of safety and professional services to provide health care services in this state.” For “hospital” § 940.20(7)(a)4 provides that the definition in § 50.33 (2) applies.

6. “Employed” is used here in the general sense of being engaged or involved in performing a duty or service.

7. The definition of “official capacity” is taken from Wis JI-Criminal 915. See the Comment to that instruction for further discussion.

8. The duties, powers, or responsibilities of some public officers, officials, and employees are set forth in the Wisconsin Statutes or Administrative Code. When that is the case, the Committee suggests using the sentence in brackets and describing the duties in the blank. The Committee has concluded that the jury may be informed of the law that declares what a person’s official duties are without running the risk of directing a verdict on an element of the crime. It is still for the jury to determine whether the person was performing the duty in the particular case. But see, State v. Jensen, 2007 WI App 256, 306 Wis.2d 572, 743 N.W.2d 468; and, State v. Schultz, 2007 WI App 257, 306 Wis.2d 598, 743 N.W.2d 823.

9. The “knew or had reason to know” requirement is taken directly from § 940.20(7)(b). It is treated as a separate element rather than being combined with the sixth element where knowledge of lack of consent is addressed. This is because the “reason to know” standard differs from the actual knowledge that is required when the word “intentionally” is used in a criminal statute. See § 939.23(3).

The instruction applies the “reason to know” standard to the victim’s status as an emergency medical care provider and to “acting in an official capacity.” The statute expressly applies “reason to know” only to status as an officer or employee. But the two requirements are so closely connected that the Committee concluded the same knowledge standard has to apply to each.

10. Knowledge that the victim was acting in an official capacity and that the victim did not consent is required because the word “intentionally” is used in the statute. That requires not only intent to cause

bodily harm but also “knowledge of those facts necessary to make his or her conduct criminal and which are set forth after the word ‘intentionally’.” § 939.23(3).

11. See § 939.23(4) and Wis JI-Criminal 923A and 923B.

12. This instruction on finding intent is a shorter version of a longer statement commonly used in the standard instructions. The Committee has concluded that this shorter version is appropriate for most cases. The complete, traditional, statement is found at Wis JI-Criminal 923A.